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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,241	12/17/2001	Philip M. Ginsberg	01-1016	3705
63710 7590 03/19/2010 INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER DASS, HARISH T				
ART UNIT 3695		PAPER NUMBER		
MAIL DATE 03/19/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/023,241

Applicant(s)

GINSBERG, PHILIP M.

Examiner

HARISH T. DASS

Art Unit

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 23, 25, 27, 32, 33, 37, 43, 50-53 and 55-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 23, 25, 27, 32, 33, 37, 43, 50-53 and 55-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/8/09, 9/18/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to applicant's communication of 2/11/2010.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/2010 has been entered.

3. *Status of Claims:*

Claims 1-12, 14-22, 24, 26, 28-31, 34-36, 38-42, 44-49, 54 are canceled.

Claims 13, 23, 25, 27, 32-33, 37, 43, 50-53, 55-77 are pending.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 64-69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 64-69 recite the limitation "the control logic" in 2nd line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 23, 25, 32-33, 55-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros et al (hereinafter Gianakouros-US 2002/0055901) in view of Lutnick et al. (Lutnick - US 2002/0169703 A1) and

(Daxim L. Lucas "Trading from wherever, whenever (Online stock investments)"; BusinessWorld; August 20, 2001, Monday) hereinafter Lucas.

Re. Claim 25, Gianakouros discloses providing a computer system designed to receive information relating to execution of trades in the financial instruments [Abstract; paragraph 24claim 28], and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 "broker will be ... commissionable trade in shortest amount of time",

57 "the commission is the charge per share ... depends on a number of factors ...broker.", 80].

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to a broker of trades in the financial instruments, the commissions to vary based at least in part on one or more attributes of a trade of a financial instrument arranged by the computer system between at least two customers, the one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location; and determining the commission for the trade based on the one or more attributes of the trade.

Lutnick discloses the commissions to vary based at least in part on one or more attributes of a trade of a financial instrument arranged by the computer system between at least two customers, the one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location; and determining the commission for the trade based on the one or more attributes of the trade [paragraphs 32, 54, 125, table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide combination of alternative commission allocations to encourage active participants to take advantage of alternative commission arrangement and trade.

Lucas discloses pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to a

broker of trades in the financial instruments. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lutnick and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile. Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognized that the results of the combination were predictable.

Re. Claim 13, Gianakouros discloses method and system, a plurality of communications links designed to communicate trade information to and from a plurality of workstations, the trade information comprising information describing orders in an electronic market for financial instruments offered for sale or bid to buy, at least some of the trade information to be presented to the workstations and a commission processing module designed to receive information relating to execution of trades in the financial instruments, and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 "broker will be ... commissionable trade in shortest amount of time", 57 "the commission is the charge per share ... depends on a number of factors ...broker.", 80];

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the electronic market, the agreement providing for commissions payable to the electronic market for brokerage of trades in the financial instruments, the commissions to vary based at least in part on one or more characteristics from the group consisting of the time of the trade, day of the trade, location of a trade, and the customer trading location.

Lutnick discloses the commissions to vary based at least in part on one or more characteristics from the group consisting of the time of the trade, day of the trade, location of a trade, and the customer trading location [paragraphs 32, 54, 125, table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide combination of alternative commission allocations to encourage active participants to take advantage of alternative commission arrangement and trade.

Lucas et al. discloses pursuant to an agreement between the customer and an operator of the electronic market, the agreement providing for commissions payable to the electronic market [see both pages]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lutnick and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile.

Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognize that the results of the combination were predictable.

Re. Claim 23, claim 23 is rejected with same rationale as claim 13.

Re. Claims 32-33, Gianakouros wherein the commission is further based on whether at least one of said two customers was an aggressor side (active) or passive side (passive) during said trade [see at least claim 21], and wherein the commission is further based on a class which includes said financial instrument [paragraph (para.) 23-33 and commission, equity, stocks]. Lutnick further discloses an aggressor side or passive side [table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide a configuration for the broker to be a default initiator of the trade.

Re. Claims 55-69, Gianakouros discloses sell and buy side of a security (financial instruments similar to said financial instrument being traded by said customer were traded by other customers at the time, day, or location said financial instrument was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40]. Lutnick discloses trading charges based in part on time, location, level of liquidity, and spread [supra, paragraphs 10, 52, 134]. It would have

been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros and include commission & fee bases (see above), as discloses by Lutnick, to be paid by the trader as trader and broker have agreed between them to compensate the broker for his/her services.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros, Lutnick and Lucas, as applied to claim 25 above and further in view Koppelman et al. (hereinafter Koppelman – US 6,662,164).

Re. Claim 27, Koppelman discloses assigning at least one of said two customers (buyer/seller) said commission based on the one or more attributes of the trade; and presenting said commission to said at least one of said two customers [Figure 2; Abstract; col. col. 2 line 48 through col. 3 line 10]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lucas, Lutnick and Koppelman to provide a procedure for informing the client what he is paying for trading and allow him/her to choose to execute a trade or not. Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognized that the results of the combination were predictable.

7. Claims 37, 43, 50-53, and 70-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros in view of Lutnick, Lucas and Koppelman.

Re. Claim 37, Gianakouros discloses a computer system designed to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [Abstract; paragraph 24; claim 28; paragraphs 20 "broker will be ... commissionable trade in shortest amount of time", 57 "the commission is the charge per share ... depends on a number of factors ...broker.", 80].

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to an operator of an electronic trading system for trades in the financial instruments, the commissions to vary based at least in part on one or more attributes of a trade of a financial instruments arranged by a computer system between at least two customers, the one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location; and storing in the memory of the computer system for offset against future commissions an amount of a reward based at least in part on the characterized attribute of the trade.

Lutnick discloses the commissions to vary based at least in part on one or more attributes of a trade of a financial instruments arranged by a computer system between at least two customers, the one or more attributes being drawn from the group consisting of the time of the trade, day of the trade, location of the trade, and customer trading location [paragraphs 32, 54, 125, table 2]. It would have been obvious at the

time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide combination of alternative commission allocations to encourage active participants to take advantage of alternative commission arrangement and trade.

Lucas discloses pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to an operator of an electronic trading system for trades in the financial instruments, It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lutnick and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile.

Koppelman discloses storing in the memory of the computer system for offset against future commissions an amount of a reward based at least in part on the characterized attribute of the trade [Figure 2; Abstract; col. col. 2 line 48 through col. 3 line 10]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lutnick, Lucas and Koppelman to alternative commission agreement based on choice of volume discount, fixed fee, pay based o time and place of the execution and trade and reward policy where desired level of performance earn by the recipients and crediting incentives toward future trading in form of reward.

Re. Claim 43, Gianakouros discloses wherein the commission is further based on whether said customer was the aggressor or passive side during said trade [supra]. Lutnick further discloses an aggressor side or passive side [table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide a configuration for the broker to be a default initiator of the trade.

Re. Claims 50-53 and 70-77, Gianakouros discloses sell and buy side of a security (financial instruments similar to said financial instrument being traded by said customer were traded by other customers at the time, day, or location said financial instrument was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40] and level of liquidity [para. 6, 57].

Lutnick discloses trading charges based in part on time, location, etc as disclosed above. Spread is known, the more the spread more is the commission (income). Gianakouros, Lutnick, or Lucas does not explicitly disclose determining said reward, reward comprises determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer. However, assign new customer for rebates and credit (determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer) are known. For example, most of stores

provide incentive to new customer to apply for store credit card and they will receive 10% credit and rebates for using their cards. It is obvious that to attract new customer and compete with others, store provide these incentives. Koppelman discloses determining said reward, reward [see supra]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros, Lutnick, and Lucas and include the above feature disclosed by Koppelman in order to calculate the rewards and bonus for eligible clients based on clients activity.

Response to Arguments

8. Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

BT "ONLINE FIRMS BEGINNING TO PROVIDE RETAIL INVESTORS WITH OPTION TO DIRECT ORDERS"; Securities Week; January 18, 1999 (SECTION: SPECIAL SECTION; SECURITIES INDUSTRY INTERNET UPDATE; Vol. 26, No. 3; Pg. 5) discloses a number of online brokerage firms are beginning to target retail investors by providing them with the option of self-directed order flow, a practice many

market participants believe will soon become uniform. According to sources, several online services are currently preparing tools that will provide users direct access to multiple markets, allowing them to choose for themselves exactly where their bids or offers will be placed and where they believe they will receive the best and fairest pricing. Previously, and unknown to the majority of retail investors, orders for specific securities entered into online systems have automatically been directed to pre-determined wholesalers, electronic communication networks and third-market firms with whom the online providers have commission or other financial agreements.

Pat Cifaldi "With Globex, Brokers Could Be Trading in a Market That Never Sleeps"; The Business Journal-Milwaukee; September 19, 1992 (SECTION: Vol 9; No 50; Sec 2; pg 10; Milwaukee; WI; US) discloses Traders--whether they're on-line or in the pit--need and expect that kind of immediate access to information. But there can be pitfalls to that immediacy. One trader confided that, during his training period, he typed in a fictional order to get a feel for how the Globex system worked. Admiring his work, the trader, who asked not to be identified, then stretched out his arm and accidentally hit the enter key on his keyboard, inadvertently purchasing a deutsche mark futures contract at the market price in the process. The high-tech access also has its costs. For starters, Globex Corp. receives a fee each time a trade is made through the electronic system. In most cases, clients never see the fees; the clients' brokerages incorporate those fees into their commissions. Also, to make trades in the system, brokers have to have special hardware. Reuters, which distributes and installs the hardware used by Globex, charges users a second set of fees. Monthly fees start at \$ 800 and can run to

\$ 1,400, depending on the location and number of units rented. In addition, there is a one-time charge of about \$ 950 for installation, and service agreements that run less than \$ 100 per month.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARISH T. DASS whose telephone number is (571)272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kyle Charles can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harish T Dass/
Primary Examiner, Art Unit 3695

3/15/2010